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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/716,221  | 11/17/2003  | Syuzo Ohbuchi        | 245402007600        | 4828             |
| 25226   | 7590        | 09/29/2005           | EXAMINER            |                  |
| MORRISON & FOERSTER LLP<br>755 PAGE MILL RD<br>PALO ALTO, CA 94304-1018 |             |                      | NGUYEN, TUAN N      |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 2828                |                  |

DATE MAILED: 09/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                      |                                       |  |
|------------------------------|--------------------------------------|---------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/716,221 | <b>Applicant(s)</b><br>OHBUCHI, SYUZO |  |
|                              | <b>Examiner</b><br>Tuan N. Nguyen    | <b>Art Unit</b><br>2828               |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 8 is/are rejected.
- 7) ☒ Claim(s) 4-7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/17/2003</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or non-obviousness.
2. Claims 1-3, 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Choquette et al. (US 5493577).

With respect to claim 1 Choquette et al. '577 discloses and shows a semiconductor having pair of cladding layers with an active layer interposed in between (Fig 1: 32, 30) (Col 7: 15-35), wherein at least one of the cladding layers is of the same composition through an tire region, excluding a dopant in the cladding layer (Col 7: 60-65). The claim further requires a stripe portion having different in conductivity type from adjacent portion. Choquette et al. '577 shows the stripe portion between the current narrowing portion (Fig 1: 20) and various dopping of p-n or p-i-n (Col 8: 20-30) without discretely disclose the conductivity of the portion. It has been held that where the general conditions of a claim are disclosed in the prior art, disclosing the optimum or workable

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ranges involves only routine skill in the art, in this case the different in conductivity between adjacent elements that can improve or oppose conductivity between portions. In re Aller, 105 USPQ 233.

With respect to claims 2,3 Choquette et al. '577 shows the stripe portion between the current narrowing portion (Fig 1: 20) wherein when said stripe portion different in conductivity type from adjacent portions is formed in each cladding layer, the stripe portions are opposed to each other with said active layer interposed therebetween (Fig 2: 20, 32, 30).

With respect to claim 8, it is obvious that the semiconductor surfaces are flat. It has been held that where the general conditions of a claim are disclosed in the prior art, disclosing the optimum or workable ranges involves only routine skill in the art, in this case the flatness surface between the elements to increase light transmission or reduction of light reflection between layers. In re Aller, 105 USPQ 233.

***Allowable Subject Matter***

3. Claim 4, 5 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The references of the record fail to teach or suggest:

**Claim 4:**

Wherein cladding layers is formed of two layers of separate inner and outer layers, and stripe portions different in conductivity from adjacent portions are opposed to

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each other with both said active layer and the inner layer of the cladding layer interposed therebetween.

**Claim 5:**

Wherein the stripe portion different in conductivity from adjacent portions is formed by using at least two carrier material gases having different absorption rates into the cladding layer at a given temperature and different conductivity, by creating a temperature distribution of crystal growth in the cladding layer.

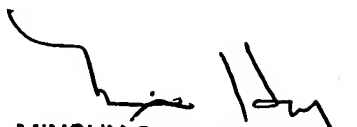
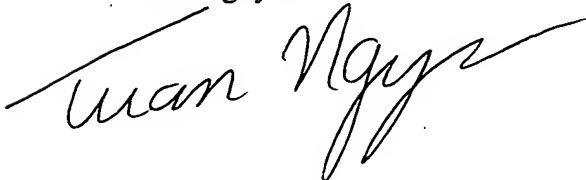
***Communication Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan N Nguyen whose telephone number is (571) 272-1948. The examiner can normally be reached on M-F: 7:30 - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harvey Minsun can be reached on (571) 272-1835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tuan N. Nguyen



MINSUN CH. HARVEY  
PRIMARY EXAMINER